

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6113

BILL NUMBER: SB 41

NOTE PREPARED: Jan 29, 2003

BILL AMENDED: Jan 28, 2003

SUBJECT: Death Penalty

FIRST AUTHOR: Sen. Young

FIRST SPONSOR:

BILL STATUS: CR Adopted - 1st House

FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill makes a person who is the subject of a protective order eligible for the death penalty or life imprisonment without parole if the person murders the individual who sought the protective order. It also makes a technical correction.

Effective Date: July 1, 2003.

Explanation of State Expenditures: Adding this condition as an aggravating factor for imposing either the death penalty or life imprisonment without parole could increase the involvement of the Office of Attorney General and the State Public Defender's Office if more death penalty cases are filed because of this bill. More death penalty cases could increase requests for reimbursements to counties from the Public Defense Fund, which reimburses counties 50% for the cost of defending indigent persons tried in capital cases.

Public Defense Fund expenditures for FY 1996 through FY 2002 for partially reimbursing counties for the costs of capital cases are provided in the following table.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Capital Cases	\$799,450	\$526,512	\$378,209	\$712,055	\$473,317

The Fund also partially reimburses counties for the costs of noncapital cases as provided in the following table if more requests for life without parole are filed.

Fiscal Year	1998	1999	2000	2001	2002
Reimbursements for Non-Capital Cases	\$1,031,467	\$2,188,699	\$3,302,471	\$3,669,318	\$4,869,314

The Public Defense Fund receives \$2.4 M annually in transfers from the state General Fund generated from court fees, and it received an additional appropriation of \$4.6 M for FY 2003.

The costs of executing an offender are generally more expensive than sentencing an offender to either a term of years or life without parole. If a jury deadlocks, then the court would be limited to sentencing an offender to a term of years.

In the table below, LSA staff compared the costs to the state of each sentencing option for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) Staff assumed an offender would spend an average period of 11 years on death row before being executed if the death penalty was imposed and 32.5 years if an offender is sentenced to 65 years in prison. (Most offenders reduce their sentences by one day for each day that they comply with prison facility codes of behavior.) Offenders sentenced to life without parole were assumed to remain in Department of Correction (DOC) facilities until the age of 77. Because these costs occur at different points in time, a net present value was prepared for each cost stream assuming an annual inflation rate of 5.2%. The following table presents these costs.

Costs to the State of Sentencing Options for a 30-Year-Old Offender Sentenced for Aggravated Murder	
<u>Sentence</u>	<u>Net Present Value</u>
Death Penalty	\$510,158
Life Without Parole	\$489,012
65 Years with 50% Credit Time	\$430,367

See also *Explanation of Local Expenditures*.

Background Information: There are three general stages of review of criminal cases at the state and federal level: direct appeal and post conviction relief at the state level and habeas corpus at the federal level. The Office of the Attorney General represents the state in all three stages of review in death penalty cases, and in direct appeal and habeas corpus if a determinate sentence is imposed. The Office of the State Public Defender represents convicted offenders requesting indigent counsel in post conviction relief.

For the Office of the State Public Defender, the estimated staff costs are \$191,182 for a death penalty case, while the staff costs for a case involving life without parole is an estimated \$3,724. For the Office of the Attorney General, the staff costs are \$72,503 for a death penalty case and \$12,004 for a case involving life without parole. Besides the staff costs for legal representation, both the DOC and the Indiana State Police generally incur added overtime costs for providing security in death penalty cases around the time of the execution.

The costs to the Department of Correction would be greater if an offender is housed in DOC facilities for a determinate sentence of between 45 and 65 years than if an offender is executed.

Explanation of State Revenues:

Explanation of Local Expenditures: This bill would allow the prosecuting attorney of a county to request either life without parole or the death penalty if the alleged murderer was the subject of a protective order and the individual who was murdered sought the protection order. Under current law, the prosecuting attorney would not be able to request either the death penalty or life without parole unless one of 16 aggravating circumstances under IC 35-50-2-9 could be cited when a murder occurred.

Background Information: Of the three possible sentencing options for murder, the death penalty is generally the most expensive for trial courts to conduct because two attorneys are required to represent the accused, and a bifurcated trial is conducted to determine guilt or innocence and whether a sentence of death is warranted. Life without parole is the next most expensive option because, while two attorneys are not required for legal representation, a bifurcated trial is also required to determine guilt or innocence and then whether a sentence of life without parole is warranted. Determinate sentencing of between 45 and 65 years is the least expensive option because one trial is conducted and two attorneys are not required to represent the defendant.

The following table summarizes the difference between these three options.

<u>Sentencing Option</u>	<u>Number of Defense Attorneys Needed</u>	<u>Type of Trial Conducted</u>
Death Penalty	Two	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Life Without Parole	One	Bifurcated - one to determine guilt or innocence and one to determine whether death penalty is warranted; a sentencing hearing is separate.
Determinate Sentence Between 45 and 65 Years	One	A single trial to determine guilt or innocence; a sentencing hearing is separate.

Consequently, the costs of legal representation for a case where the most serious sentence is between 45 and 65 years would likely be lower than the costs of a case involving life without parole.

No information is available on the costs of murder cases in which the most serious sentence was between 45 and 65 years of incarceration. However, at the request of the Criminal Law Study Commission, Legislative Services Agency staff compared the costs of death penalty cases and cases in which life without parole was the most serious outcome that could occur. The following table displays the cost components for a “typical” death penalty trial and a trial where life without parole is the most serious sentence.

Cost Components for Murder Trials:		
	Death Penalty	Life Without Parole
Attorneys and Related Costs*	\$107,804	\$27,370
Jury and Related Costs	\$46,375	\$10,150
Cost of Appeals	\$54,355	\$5,466
Prosecuting Attorney	\$2,340	\$2,948
County Sheriff	\$8,472	\$4,380
Total Costs	\$219,346	\$50,314
*Net Costs After Reimbursement From Public Defense Fund		

The cost of legal representation for a criminal defendant in a death penalty case is four times as expensive as the costs of a criminal trial in which the most serious sentence is life without parole. The costs of a trial where a determinate sentence is the most serious sentence is likely to be less than the costs of a trial in which life without parole is the most serious sentence.

Explanation of Local Revenues:

State Agencies Affected: Department of Correction, Office of the Attorney General, Office of the State Public Defender, State Police.

Local Agencies Affected: Trial Courts, County Sheriff.

Information Sources: Indiana Supreme Court; *The Application of Indiana's Capital Sentencing Law, Findings of the Indiana Criminal Law Study Commission* (January 10, 2002); Website of Clark County (IN) Prosecuting Attorney, <http://www.clarkprosecutor.org/html/death/>

Fiscal Analyst: Mark Goodpaster, 317-232-9852